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July 30, 1997

VIA HAND DELIVERY

Mr. William F. Caton

Acting Secretary

Federal Communications Commission

1919 M Street, NW

Washington, DC 20554

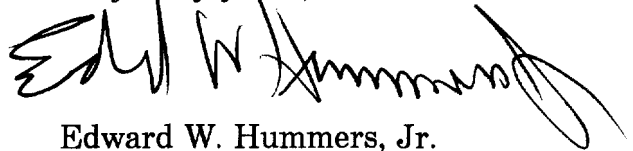
Re: MM Docket No. 97-97; RM No. 9047
Amendment of Sec. 73.202(b) -
Table of FM Allotments
Mt. Juliet & Belle Meade, TN

Dear Mr. Caton:

Transmitted herewith, on behalf of Mt. Juliet Broadcasting, Inc., Permittee of FM Station WNPL, Mt. Juliet, Tennessee, are an original and four copies of its Opposition to Motion for Acceptance of Late-Filed Comments of The Cromwell Group, Inc., in the above-referenced proceeding.

Should there be any questions, please communicate with the undersigned.

Very truly yours,



Edward W. Hummers, Jr.
Counsel for
Mount Juliet Broadcasting, Inc.

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Enclosures

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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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In the Matter of)
)
Amendment of Section 73.202(b))
Table of FM Allotments) MM Docket No. 97-97
(Mt. Juliet and Belle Meade,) RM No. 9047
Tennessee))

To: Chief, Allocations Branch

OPPOSITION TO MOTION FOR ACCEPTANCE OF LATE-FILED COMMENTS

Mt. Juliet Broadcasting, Inc. ("WNPL"), permittee of FM station WNPL, Mt. Juliet, Tennessee, hereby submits its opposition to The Cromwell Group, Inc.'s ("Cromwell") Motion For Acceptance of Late-Filed Comments ("Motion") in the above-captioned proceeding.

FACTUAL BACKGROUND

The Commission initiated this rule making proceeding with the release of the Notice of Proposed Rulemaking on March 21, 1997 pursuant to the request of WNPL for reallocation of Channel 294A from Mt. Juliet to Belle Meade, Tennessee and for modification of its construction permit to specify Belle Meade as the community of license.

The Commission set May 12, 1997 as the deadline for comments from interested parties. *See Notice of Proposed Rule Making*, 12 FCC Rcd 3201 (1997). On July 21, 1997, over two months after the comment filing deadline, Cromwell filed the present Motion seeking leave of the Commission to accept its untimely comments "in the interest of filing a full and complete record." *Motion* at 2. On July 16, 1997, the Bureau adopted its Report and Order in this case granting WNPL's request to reallocate Channel 294A and to modify its

construction permit and terminating the proceeding. *See Report and Order*, DA 97-1559, released July 25, 1997.

ARGUMENT

Cromwell is not entitled to the relief sought because its Motion is untimely, and any delay would adversely affect the public interest and unfairly prejudice WNPL. Cromwell failed to file its Motion within the requisite time period, and no compelling facts have been offered to justify an extension of time. Furthermore, the Commission terminated this proceeding after reallocating Channel 294A to Belle Meade and modifying the WNPL construction permit.

1. Cromwell Failed to File its Motion within 7 Days Before the Filing Date

Section 1.46(b) of the Commission's Rules requires that motions for extension of time "be filed at least 7 days before the filing date." The filing date in this matter was May 12, 1997, and Cromwell's Motion was filed on July 21, 1997, two months and nine days after the filing deadline. Accordingly, Cromwell is only entitled to relief if an emergency situation caused its delay in meeting the filing deadline. *See* 47 C.F.R. § 1.46(b).

a. No Emergency Situation Exists

Because it has not asserted and, therefore, has not demonstrated an "emergency situation" that interfered with its ability to file timely comments as required by Section 1.46(b)¹, Cromwell is not entitled to an extension of time. *Id.* The acceptance of late-filed

¹ Cromwell cites one authority as supporting its position that late comments should be accepted in the interest of compiling a complete record. *In the Matter of Streamlining Broadcast EEO Rule and Policies*, 11 FCC Rcd 11654 (MMB, 1996). The Commission in *Streamlining Broadcast* did not rely on the fact that the movant's comments were necessary to compile a complete record. The Commission recognized that late motions may only be accepted in emergency situations and accepted the movant's argument that the delay was due to emergency personnel and technical problems - problems that clearly did not exist here.

pleadings is contrary to the Commission's policy "that extensions of time should not be routinely granted" and that extensions are granted only when the movant demonstrates unusual and compelling circumstances. *See* 47 C.F.R. § 1.46(a); *See also In the Matter of Amendment of Section 73.202(b), Table of FM Allotments, FM Broadcast Stations. (Avra Valley, Comobabi, Florence, Oracle Oro Valley, and San Carlos, Arizona)*, 12 FCC Rcd 1202, 1203 (1997) (denying a motion to accept late comments because the movant "made no statement that an emergency existed in the case"); *In the Matter of Application of Motorola SMR, Inc. 900 MHz SMR Authorization, New York MTA Auction ID: 7*, FCC File No. D031374; 1997 FCC LEXIS 2376, at *9 (WTB, May 7, 1997) (stating that "late-filed pleadings are accepted only in emergency situations" and that the Commission's "rules disfavor the granting of extensions of time"); *In the Matter of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Santa Isabel, Puerto Rico and Christiansted, Virgin Islands)*, 3 FCC Rcd 2336, 2337 (1988) (stating that a movant must "demonstrate unusual or compelling circumstances" for the Commission to grant a waiver of a deadline).

Here, no emergency, unusual, or compelling circumstance has been offered by Cromwell. All parties had sufficient time to respond. The Commission allowed interested parties almost two months to prepare and file comments in this matter. Timely comments were filed by WNPL, Great Southern Broadcasting Company, Inc., and David J. Waynick, Mayor of Mt. Juliet. Recently, in another proceeding, the Commission considered and rejected a timely motion for late comments because ample time was given to respond. *See In the Matter of Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, 12 FCC Rcd 3070 (MMB, 1997). Given the timely responses

received, clearly there was ample time to develop a comprehensive record. Furthermore, Cromwell fails to offer any facts relevant to the required public interest determination but, rather, presents legal and policy arguments which were already fully within the knowledge of the Bureau.

2. The Public Interest Would Be Injured and WNPL Would Be Prejudiced if Cromwell's Motion Is Granted

Because it would further delay the initiation of service to the public, a grant of the Cromwell Motion is not in the public interest. As shown in this record, WNPL commenced service from its original site only to be forced off the air because of EMI to air navigation facilities. The WNPL staff had been hired at that time and now awaits return to the air. If Cromwell's Motion is granted, action on the pending WNPL application to change sites may be delayed. WNPL could also be compelled to commit further time and expense to prepare a responsive pleading when Cromwell has supplied no justification for its late filing. To grant Cromwell's Motion under these circumstances would not be in the public interest. Cromwell's Motion should, therefore, be denied.

In the past, where such factors existed, the Commission has refused to grant extensions of time. For instance, in *In re Applications of Guaranty Broadcasting Corporation for Renewal of Licenses for Stations KJIN(AM) and KCIL(FM), Houma, Louisiana*, the Commission rejected a late motion because it was "untimely" and "disruptive." 12 FCC Rcd 1660 (1997). The Cromwell Motion shares both of these characteristics and will serve no other purpose except to further delay this proceeding.

CONCLUSION

Cromwell has failed to satisfy the requirements of Section 1.46, and acceptance of the Motion would unfairly delay service to the public and prejudice WNPL. Accordingly, Cromwell's Motion for Acceptance of Late-Filed Comments should be denied.

Respectfully Submitted,

MT. JULIET BROADCASTING, INC.

By: 

Edward W. Hummers, Jr.

David A. Vaughan

Julie Chung Kim

Its Counsel

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July 30, 1997

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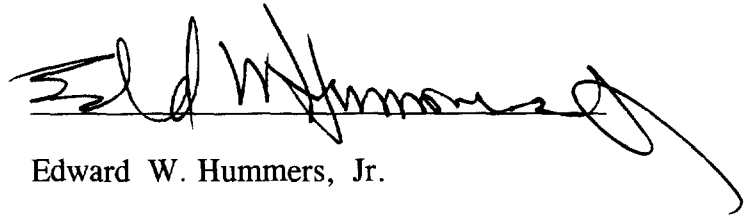
CERTIFICATE OF SERVICE

I hereby certify that the foregoing Opposition to Motion for the Acceptance of Late-Filed Comments was mailed on this ~~30th~~ day of July, 1997 to the following by first class mail, postage prepaid.

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